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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,459	02/17/2004	Timothy M. Holub	306258	1389
33042 7590 06/04/2007 LEYDIG, VOIT & MAYER, LTD. (SEATTLE OFFICE) TWO PRUDENTIAL PLAZA SUITE 4900 CHICAGO, IL 60601-6731			EXAMINER JACKSON, DANIELLE	
			ART UNIT 3636	PAPER NUMBER
			MAIL DATE 06/04/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/780,459

Applicant(s)

HOLUB, TIMOTHY M.

Examiner

Danielle Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 41-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-45, 57-60 and 72-77 is/are rejected.
- 7) ☒ Claim(s) 46-56 and 61-71 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/14/05, 9/7/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 44-50 and 59-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 44 and 59 recites the limitation "the elongate protrusion" in the first line. There is insufficient antecedent basis for this limitation in the claim since independent claims 41 and 58 recite "a flexible protrusion"; it is unclear whether these protrusions are referring to the same element.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 41-45, 57-60 are rejected under 35 U.S.C. 102(b) as being anticipated by Double et al. (US-6,474,022 B1).

Double et al. teaches a fabric covering (8) that can be a rain fly for a tent or a canopy for a shelter (as seen in FIG. 1) comprising a top (12), a flexible protrusion (36), wherein the flexible protrusion is rotatably connected to the top of the between a first

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position where the flexible protrusion is spaced a first distance from the top and a second position where the flexible protrusion is spaced a second distance from the top (the two position are seen in FIGS. 1A and 7), the second distance being greater than the first distance. The fabric covering further includes a support structure, wherein the support structure is the portion of the covering that lies beneath the flexible protrusion when in the first position seen in FIG. 7, for preventing rotation of the flexible protrusion in a direction away from the first position to beyond the second position. A bead (14a) is connected to the top of the flexible protrusion by a flexible strip of material.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 72-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Itzigebl (DE-3606278 A1) in view of Knoop et al. (US-6,612,075 B1).

Itzigebl shows a fabric covering comprising a flexible gutter (3) arranged to direct water along the fabric covering. Itzigebl lacks a downspout arranged to receive water flowing along the gutter. Knoop et al. teaches a downspout meant to be removably connected to a gutter (20) to receive water at a first end which comprises a ring (27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Itzigebl to include a downspout arranged to receive water flowing along

the gutter, as suggested by Knoop et al., in order to provide a means to direct water out of the gutter and onto the ground so that water does not pour out of the gutter creating the possibility to dampen the users of the tent. Furthermore, Knoop et al. teaches the downspout to be made of any flexible waterproof material (column 2, lines 45-48) and it would have been obvious to make the downspout of fabric.

***Allowable Subject Matter***

4. Claims 46-56 and 61-71 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Jackson whose telephone number is (571) 272-2268. The examiner can normally be reached on Monday through Friday 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Dunn can be reached on (571) 272-6670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DNJ  
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DAVID DUNN  
SUPERVISORY PATENT EXAMINER